

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States

v.

Case No. 05-cr-55-01-SM

Amalia Bracero

ORDER

Re: Document No. 26, Motion to Reduce Sentence - Cocaine
Amendment

Ruling: Granted, in part. For the reasons articulated by the government in its response, the court's ability to amend a previously imposed sentence is derived from statutory provisions which permit resentencing based upon guideline provisions made retroactive to defendant's case. The guideline made retroactive to defendant's case is not actually retroactive until March 3, 2008, so, as of today, no authority exists to modify defendant's previously imposed sentence. Given the nature of the arrow of time, the power to act will not arise until March 3rd with respect to this sentence, but then retroactive application will reach back to today to affect the sentence as it currently stands, which, as a practical matter, will mean that, a new sentence will be substituted, retroactively, that imposes less time in prison than defendant will have already served, at the time it is imposed. The best that can be done under these circumstances is to anticipate the retroactive application (assuming retroactivity will go into effect on March 3rd), and order the new sentence imposed as of that date. An amended judgment shall be entered, effective on March 3, 2008, amending the sentence to imprisonment from 24 months to 18 months. Defendant will apparently be entitled to release on that date, assuming her good time credit and other factors are properly calculated. The Bureau of Prisons is perfectly capable of processing defendant for release on that date, if she is so entitled, given that a week remains to accomplish that processing. So Ordered.


Steven J. McAuliffe
Chief Judge

Date: February 25, 2008

cc: Jonathan Saxe, Esq.
Aixa Maldonado-Quinones, AUSA
Helen Fitzgibbon, AUSA
U.S. Probation Office
U.S. Marshal